Supreme Court, U.S.
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No. 99-618

IN THE

Supreme Court of the United States

PLANNED PARENTHOOD OF KANSAS AND MID-MISSOURI, INC.,

Petitioner,

v.

STATE OF MISSOURI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF

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Introduction

On October 8, 1999, Planned Parenthood of Kansas and Mid-Missouri, Inc. ("Planned Parenthood") filed a petition for a writ of certiorari to review two orders of the United States Court of Appeals for the Eighth Circuit. On October 12, 1999, this Court heard oral argument in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 149 F.3d 303 (4th Cir. 1998), *cert. granted*, 119 S. Ct. 1111 (1999), in which one of the issues as to which *certiorari* was granted is substantially the same as the issue presented by Planned Parenthood's Petition. The overlapping issue is whether a plaintiff who obtains substantially all of the relief sought in litigation qualifies as the "prevailing party" under federal fee-shifting statutes in civil rights and environmental actions, notwithstanding the dismissal of plaintiff's action on technical grounds. In light of the commonality of issues in *Friends of the Earth* and the instant Petition, Planned Parenthood respectfully urges the Court to hold the Petition in abeyance pending the Court's decision in *Friends of the Earth*.

The *Planned Parenthood* Case in Brief

In the courts below, Planned Parenthood challenged the constitutionality of a series of Missouri appropriations measures under which it was deemed ineligible for public funds for family planning services under the construction given to the measures by the Missouri Department of Health (the "Department"). The district court construed the measures in the same manner as the Department, and held that, as so construed, the statutes violated Planned Parenthood's right to equal protection. The district court entered an order and an injunction that resulted in Planned Parenthood qualifying for the public funds at issue, and thus achieving the goal of its litigation.

On appeal by the State of Missouri, the Eighth Circuit likewise issued a decision that resulted in Planned Parenthood qualifying for the public funds. However, the Eighth Circuit, unlike the district court, applied the jurisprudential rule that courts should, wherever possible, avoid holding statutes to be unconstitutional. The court therefore construed the statute in a manner that rendered Planned Parenthood eligible for funding, and upheld the constitutionality of the statute. Because it upheld the statute, the Eighth Circuit dismissed Planned Parenthood's complaint. Nonetheless, for all practical purposes, Planned Parenthood was the victor, having obtained all of the relief that it sought by its litigation, and the State, having failed in its quest to withhold state family planning funds from Planned Parenthood, was clearly the loser.

Despite Planned Parenthood's substantive victory, the Eighth Circuit held that the State was the prevailing party and denied Planned Parenthood's motion for attorneys' fees under 42 U.S.C. § 1988.

The *Friends of the Earth* Case in Brief

In *Friends of the Earth*, a citizen's suit under the Clean Water Act, the defendant, a hazardous waste incinerator operator, voluntarily came into compliance with its discharge permit under that Act as a result of plaintiffs' lawsuit. However, because defendant had brought itself into compliance with its permit in the course of the litigation, the district court denied plaintiffs' request for injunctive relief. On appeal, the Fourth Circuit reasoned that, absent injunctive or declaratory relief, the only potential relief available to redress plaintiffs' injury would be a civil penalty imposed on the defendant, and, it held, such penalties cannot redress an injury suffered by citizen plaintiffs. The court therefore held that plaintiffs did not have standing, and remanded the case with instructions that it be dismissed as moot. This Court granted certiorari to

consider that ruling. The Court further granted certiorari to review the court of appeals' additional ruling that:

> [p]laintiffs' failure to obtain relief on the merits of their claims precludes any recovery of attorneys' fees or other litigation costs because such an award is available only to a "prevailing or substantially prevailing party."

Friends of the Earth, 149 F.3d at 307 n.5 (citation omitted).

Supplemental Reasons for Granting the Writ

This Court has consistently held that a plaintiff is a prevailing party if it succeeds in "chang[ing] the legal relationship between itself and the defendant," *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989), "acquires the primary relief sought," *Hensley v.* Eckerhart, 461 U.S. 424, 433 (1983), and "vindicate[s] rights through a consent judgment or *without formally obtaining relief*," *Maher v. Gagne*, 448 U.S. 122, 129 (1980) (emphasis added) (citation omitted). *See* Petition at 10-17. In both *Planned Parenthood* and *Friends of the Earth*, the courts of appeals' denials of attorneys' fees to the party who substantially achieved the goal of its litigation — *i.e.*, Planned Parenthood, by obtaining the public funds that the State of Missouri had sought to deny, and Friends of the Earth, by inducing the defendant to come into compliance with the Clean Water Act — were plainly contrary to prevailing party doctrine established by this Court.

Given the similarity between *Planned Parenthood* and *Friends of the Earth* on this issue, it is appropriate for the Court to consider the cases together. Accordingly, Planned Parenthood requests that the Court hold the Petition in abeyance pending its determination of *Friends of the Earth*.

Respectfully submitted,

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